

In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review Plan," published in the Federal Register on January 24, 2001, 66 FR 7701, EPA has withdrawn this document from the Office of the Federal Register to give the Administrator an opportunity to review it.

January 5, 2000

EPA PROCEEDS WITH EFFORTS TO REDUCE SMOG ACROSS EASTERN U.S.

FACT SHEET

TODAY'S ACTION

- Today the Environmental Protection Agency (EPA) is issuing a proposal giving the public an opportunity to comment on narrow aspects of the Agency's strategy to reduce nitrogen oxides (NO_x) across the eastern United States, a rule commonly called the NO_x SIP call.
 - This proposal addresses several issues: 1) how much pollution control should be applied to "stationary internal combustion engines" and how to define "electric generating units;" 2) it proposes a range of dates for which states could submit the Phase II portion of the NO_x SIP call and for Georgia and Missouri to submit full SIPs: 128 days through 1 year from final promulgation but no later than April 1, 2002; and 3) it proposes specific geographic boundaries for four of the 23 states included in the 1998 NO_x SIP call, and 4) it excludes Wisconsin from the state implementation plan (SIP) requirements.
- Today's action is in response to a March 3, 2000 ruling from the U.S. Court of Appeals for the D.C. Circuit that largely upheld the NO_x SIP call but remanded a few minor issues to EPA.
- This proposal defines "electric generating unit," "non-electric generating units" and takes comment on a range of pollution control levels for "stationary internal combustion engines." The proposal addresses whether, and if so, how, a small subclass of facilities that generate electricity should be included in the rule, and what control levels should be assumed in reducing air pollution from large, stationary internal combustion engines (82%-91%).
- After the March 3rd Court decision supporting most portions of the NO_x SIP call, EPA decided to separate the requirements of the regional strategy into two phases. The deadline for states to submit their plans to comply with Phase I of the strategy was October 30, 2000. Details of Phase I were outlined in April 11, 2000 letters to Governors in the affected states. The deadline to comply with Phase I is May 31, 2004.
- In this proposal, EPA is identifying a range of due dates for the 19 states and the District of Columbia subject to Phase II to submit to EPA their plans for meeting the strategy's requirements: 128 days through 1 year from final promulgation but no later than April 1, 2002. This date would also apply for Georgia and Missouri's full NO_x SIP Call submittal. EPA is proposing that the deadline to comply with Phase II by May 31, 2004.

- This proposal addresses what amount of nitrogen oxides is appropriate for Missouri and Georgia to emit into the air. This “NOx budget”, the maximum amount of NOx emissions allowed for that state during the “ozone season” (May 1 through Sept. 30 each year) beginning in 2007, was highlighted by the March 3rd Court decision as an issue that EPA needed to reconsider for Georgia and Missouri. In the original regional strategy to reduce NOx, EPA had included the entire states of Georgia and Missouri. Based on guidance from the Court, EPA is now proposing to exclude the southern portion of Georgia and the western portion of Missouri from the regional strategy.
- While no one involved with the lawsuit over this regional strategy to reduce smog raised the issue of including the entire states of Alabama and Michigan in the NOx SIP Call, the reasoning in the March 3, 2000 decision by the US Court of Appeals’ regarding Georgia and Missouri applies equally to Alabama and Michigan. Based on the information in the record, EPA has calculated a NOx budget for Alabama and Michigan that reflects reductions only in portions of these states. We are proposing that Alabama and Michigan would meet their Phase I requirement of the NOx SIP call if they submitted plans meeting these modified budgets.
- EPA proposes to remove Wisconsin from the NOx SIP Call for the time being, because the court determined that the record did not support including that state.

Overview

- EPA’s proposal is designed to address the issues raised in March 3, 2000 ruling by the Court that largely upheld the SIP Call for the District of Columbia and the following states: Alabama, Connecticut, Delaware, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Michigan, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and West Virginia.
- NOx emissions from facilities in upwind states contribute to ground-level ozone pollution (smog) in downwind states. When inhaled – even at very low levels – ground-level ozone can cause acute respiratory problems, aggravate asthma, reduce lung capacity, inflame lung tissue, and impair the body’s immune system.
- All affected states and the District of Columbia will have to implement pollution control measures to reduce their NOx emissions by May 31, 2004; emissions must be reduced to specific levels by 2007. These reductions will improve air for more than 100 million people -- including people in both downwind states, and the states where sources are making the reductions.
- The NOx SIP Call will help states meet the 1-hour ozone standard.

WHAT HAPPENS NEXT

- There is a 45 day comment period for the proposal on the definition of “electric generating unit,” level of control for “stationary internal combustion engines,” and clarifying the geography boundary of the NOx SIP Call.
- The Court granted EPA’s request to lift the stay on June 22, 2000. As a result, the District of Columbia and the 19 affected states will have to submit revised SIPs in two phases: The first phase plans, due Oct. 30, 2000, must contain the measures the states will use to address the portion of the NOx budgets not affected by the Court’s decision. For most of these states, the budget covers about 90 percent of the reductions required in the NOx SIP Call rule.
- States may adopt whichever control measures they choose to meet the required NOx reductions: they may choose any combination of reductions from their NOx sources, provided they reduce NOx pollution to the required level.

BACKGROUND

- EPA issued the NOx SIP Call rule in September 1998 as part of its efforts to reduce unhealthy air in the eastern half of the country. The original rule required 22 states and the District of Columbia to reduce NOx emissions that cross state boundaries, forming ground-level ozone in downwind states.
- Eight states challenging the rule asked the U.S. Court of Appeals for the D.C. Circuit to stay the due date for the state plans; as an interim measure, the court issued an indefinite stay on May 25, 1999.
- On September 18, 2000, EPA stayed the NOx SIP Call as it applied for the 8-hour ozone standard while litigation on that standard proceeds.
- On March 3, 2000, the U.S. Court of Appeals for the D.C. Circuit issued an opinion largely upholding the NOx SIP Call. In the opinion, the Court:
 - ▶ Upheld EPA’s approach to determining whether an upwind state significantly contributes to smog problems in a downwind state.
 - ▶ Found that EPA had sufficiently analyzed individual states’ emissions in determining which states significantly contribute to smog downwind.
 - ▶ Upheld EPA’s basic approach to determining how much a state needs to cut its NOx emissions to reduce its significant contribution to downwind air quality problems. EPA’s approach was to require states that contribute to downwind air quality problems to make reductions that are “highly cost-effective” (i.e., that cost \$2000/ton or less).

- ▶ Found that EPA's approach did not impermissibly intrude on the statutory right of states to develop clean air plans.
- The Court upheld the rule for 19 states and D.C., but vacated it for Wisconsin, Georgia and Missouri, sending the portions of the rule focusing on those states back to EPA for further rulemaking. The Court found that the record did not support the inclusion of Wisconsin in the SIP Call. The Court also found the record did not support including Georgia and Missouri in full.
- The Court also found that EPA had not provided adequate notice before including a small class of units in its definition of electric generating unit. In addition, the Court found that EPA had not provided adequate notice on the reduction level assumed for large, stationary internal combustion engines.
- On April 11, 2000, EPA asked the U.S. Court of Appeals for the D.C. Circuit to end the stay of the date by which states are required to submit the plans, known as state implementation plans, or SIPs. As an interim measure, the Court stayed the due date for the plans in May 1999 until it could consider arguments on challenges to the NOx SIP Call.
- The Court lifted the stay on June 22, 2000, therefore 19 affected states are required to submit revised SIPs in two phases: The first phase plans, due Oct. 30, 2000, must contain the measures the states will use to address the portion of the NOx budgets not affected by the Court's decision. The EPA is proposing a range of dates for the 19 states and the District of Columbia subject to Phase II to submit to EPA their plans for meeting the strategy's requirements: 128 days through 1 year from final promulgation but no later than April 1, 2002. This date would also apply for Georgia and Missouri's full NOx SIP Call submittal.
- Based on an August 30, 2000 ruling from the Court, the compliance date for implementation of Phase I will be May 31, 2004.

ELECTRICITY SUPPLY

- Before issuing the NOx SIP Call, EPA examined the impact of the rule on the reliability of the country's electricity supply. As a result of that examination, EPA anticipates that installation of the emission controls required by the NOx SIP Call would not cause or exacerbate electricity-availability problems, even during the summer when demands are high.
- A study by an industry group, the North American Electric Reliability Council, predicted that there would not be a reliability problem if facilities had 30 months lead time to install controls. The schedule announced today provides more than that amount of lead time.

- Some affected electric power companies may reduce NOx emissions by installing systems known as *selective catalytic reduction*, or SCR, on individual boilers. EPA anticipates that SCR would be installed on about 10 percent of affected boilers.
- Most SCR systems can be built next to a boiler while the boiler continues to operate. The boiler only needs to be shut down long enough to connect the SCR device. Companies normally install such controls when the units are shut down to perform other routine maintenance –which is not done during the summer.
- Most of the SCR installations EPA has looked at both in the US and abroad have required units to be off-line for less than five weeks – and in some cases, as little as two. Under the timetable EPA requested today, companies would have more than two-and-a-half years to install controls.
- As an added safeguard against reliability problems, the NOx SIP call allows states to use a compliance supplement pool to assist facilities that experience unexpected problems installing the necessary equipment. This pool contains credits that equal more than one third of a single year’s NOx budget. To avoid electricity supply problems, facilities can either buy these credits from a facility that reduced its emissions early or be given these credits by the state.

FOR MORE INFORMATION

- To download a copy of the proposals, go to <http://www.epa.gov/ttn/oarpg>
- To download a copy of the original NOx SIP Call rule, go to http://www.epa.gov/ttn/oarpg/t1/fr_notices/nxsip.pdf
- To download a copy of the Court’s March 3 and June 22 rulings, go to the March 2000 and June 2000 sections on <http://pacer.cadc.uscourts.gov/common/opinions/>.
- For additional information, call Kimber Scavo of EPA’s Office of Air Quality Planning & Standards at 919-541-3354.